

Amendment #16
Collins 2
Passed voice vote

AMENDMENT TO THE AMENDMENT IN THE

NATURE OF A SUBSTITUTE TO H.R. 9

OFFERED BY MR. COLLINS OF GEORGIA, **Mr. Deutch,**
Ms. Lofgren and Mr. Farenthold

Page 15, strike line 7 and all that follows through
page 17, line 23 and insert the following:

1 (d) DISCOVERY STAY.—

2 (1) AMENDMENT.—Chapter 29 of title 35,
3 United States Code, as amended by subsection (a),
4 is further amended by inserting after section 281A
5 (as added by such subsection) the following new sec-
6 tion:

7 **“§ 281B. Stay of discovery pending a preliminary mo-**
8 **tion.**

9 “(a) IN GENERAL.—Except as provided in subsection
10 (d), in an action for patent infringement under section
11 271 or an action for a declaratory judgment that a patent
12 is invalid or not infringed, discovery shall be stayed if—

13 “(1) the defendant moves to—

14 “(A) sever a claim or drop a party for
15 misjoinder under Rule 21 of the Federal Rules
16 of Civil Procedure;

17 “(B) transfer the action under section
18 1404(a) of title 28;

1 “(C) transfer or dismiss the action under
2 section 1406(a) of title 28; or

3 “(D) dismiss the action pursuant to Fed-
4 eral Rule of Civil Procedure 12(b); and

5 “(2) such motion is filed within 90 days after
6 service of the complaint and includes a declaration
7 or other evidence in support of the motion.

8 “(b) EXPIRATION OF STAY.—A stay entered under
9 subsection (a) shall expire when all motions that are the
10 basis for the stay are decided by the court.

11 “(c) PRIORITY OF DECISION.—In an action described
12 in subsection (a), the court shall decide a motion to sever
13 a claim or drop a party for misjoinder under Rule 21 of
14 the Federal Rules of Civil Procedure, to transfer under
15 section 1404(a) to title 28, to transfer or dismiss under
16 1406(a) of title 28, or to dismiss the action pursuant to
17 Federal Rule of Civil Procedure 12(b) before the earlier
18 of the date on which the court—

19 “(1) decides any other substantive motion, pro-
20 vided however that the court may decide a question
21 of its own jurisdiction at any time; or

22 “(2) issues a scheduling order under Rule 16(b)
23 of the Federal Rules of Civil Procedure.

24 “(d) EXCEPTION.—

1 “(1) DISCOVERY NECESSARY TO DECIDE MO-
2 TION.—Notwithstanding subsection (a), the court
3 may allow such discovery as the court determines to
4 be necessary to decide a motion to sever, drop a
5 party, dismiss, or transfer.

6 “(2) COMPETITIVE HARM.—Subsections (a) and
7 (c) shall not apply to an action in which the patentee
8 is granted a preliminary injunction to prevent harm
9 arising from the manufacture, use, sale, offer for
10 sale, or importation of an allegedly infringing prod-
11 uct or process that competes with a product or proc-
12 ess made, sold, or offered for sale by the patentee.

13 “(3) CONSENT OF THE PARTIES.—The patentee
14 and an opposing party shall be excluded, in whole or
15 in part, from the limitations of subsections (a) and
16 (c) upon such parties’ filing with the court a signed
17 stipulation agreeing to such exclusion.

18 “(4) FDA AND BIOLOGICAL PRODUCT APPLICA-
19 TION.—Subsections (a) and (c) shall not apply to an
20 action that includes a cause of action described
21 under section 271(e)(2).”.

22 (2) CONFORMING AMENDMENT.—The table of
23 sections for chapter 29 of title 35, United States
24 Code, is amended by inserting after the item relating

1 to section 281A, as added by subsection (a), the fol-
2 lowing new item:

“281B. Stay of discovery pending a preliminary motion.”.

